REMARKS

As a preliminary matter, Applicants' attorney thanks the Examiners for the courtesies extended during the recent telephone interview on November 5, 2003, for the acknowledgment that clarifying amendments to the claims along the lines sets forth herein would remove the rejection based on the applied art, and for the acknowledgment that such clarifying amendments would be entered. Accordingly, Applicants have amended Claims 1-6, 8-13, 15-16, and 18-19 without prejudice as to patentability. These amendments are fully supported in the specification and drawings as originally filed, and no new matter has been added.

Claims 1-20 Define Over Javors and McCallum

Claims 1-20 stand rejected under 35 U.S.C. §103 as being unpatentable over Javors (US 2002/0152097) in view of McCallum (5,784,635). Applicants disagree with the rejection and disagree that the final status of the Official Action was proper. First, as discussed during the telephone interview, elements of Claim 1, as well as other claims, were ignored or not taken into account in the Official Action. For example, on page 2, paragraph 3, the example of the funding step ignores and fails to reference the language in the original claim related to the language "if the ancillary medical costs of the plurality of physicians in the healthcare practice do not decrease to a preselected level over a preselected period of time" when applying Javors. As such, for this reason alone, the final status was improper and the combination of Javors and McCallum fails to teach or suggest every element of the claimed invention as required to make a proper 35 U.S.C. 103 rejection.

Second, as also discussed during the interview, Applicants respectfully submit that Javors teaches away from making a combination with McCallum to arrive at the claimed invention because Javors teaches the failures of the current managed care model and yet McCallum teach using the data information system described therein in current managed care models.

Third, there is no motivation or suggestion to combine Javors and McCallum when the two patents take such disparate approaches, namely combining a patient medical account format in a new healthcare model with a data information system to help physicians negotiate with insurance companies. With all respect, there is no motivation, and it seems illogical that one

skilled in the art would even consider making such a combination. For example, Javors is focused on a new healthcare payment model to provide incentives to patients and teaches a benefit plan and a method of administration and health management directed to helping employers and patients manage health care costs by providing patient medical care accounts funded by premiums from the employers or patients. Specifically, Javors teaches providing a benefit plan comprising a Health Care Account and an Umbrella Account, collecting insurance premiums from employers or patients for deposit into the benefit plan to form funded a Health Care and Umbrella Account, processing claims made by a benefit plan beneficiary, disbursing funds from the funded Health Care and Umbrella Account to pay the processed claims, and distributing any remaining funds in the funded Health Care and Umbrella Account to the beneficiaries (see Abstract and Claim 1). Javors fails to teach or suggest a method of collecting fees for managing a plurality of physicians in a healthcare practice participating in an insurance network. Nor does Javors teach or suggest a method of collecting fees for managing and optimizing the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein. Javors' benefit plan and method for benefit administration is designed to encourage benefit plan beneficiaries (i.e., patients) to become more involved in their health care through a system of financial reward (see page 4, Paragraph 0050), rather than manage the physicians in a healthcare practice participating in an insurance network and the profitability of the insurance network as well.

McCallum, on the other hand, describes a software-based data information system and method for rationalizing physician data to allow physicians to more effectively negotiate with insurers. Specifically, McCallum teaches that source data expected to be in diverse formats and syntax is first converted to a common format, and then cross-referenced and cleaned against standard data resources. Source data is subsequently ready to be accumulated into a standard database of universal format. Such a database is used to provide reports to physician groups and Independent Practice Associations to support critical information system (see Abstract and Claims 1 and 7). McCallum fails to teach or suggest a method of collecting fees for managing a plurality of physicians in a healthcare practice participating in an insurance network or the profitability of an insurance network having a plurality of physicians in a healthcare practice participating therein.

In contrast, the present invention teaches providing incentives to physicians to help them control their own costs more effectively to thereby receive better reimbursement from the insurance carrier or for the insurance carrier to make effective physician group management decisions. Accordingly, there is no motivation to combine these patent documents to somehow arrive at the claimed invention. Instead, Applicants believe that the Examiner has improperly taken elements from each of Javors and McCallum out of context and has used improper hindsight by using Applicants' patent application disclosure as a road map to then piecemeal elements from these Javors and McCallum patent documents together in an attempt to reject the claims. As set forth above, because Javors and McCallum, individually and in combination, fail to teach or suggest all of the elements of the claimed invention, even if these patent documents were somehow combinable, the result of the combination would not be the claimed invention.

Javors does not teach a method of collecting fees for managing and optimizing the profitability of the physicians in a healthcare practice participating in an insurance network as claimed in the present invention. In his method, Javors does not describe establishing a relationship between a healthcare consultation group and the healthcare practice participating in an insurance network to increase the physician's profitability by reducing a risk of not receiving a predetermined reimbursement amount for ancillary medical costs from the insurance network. Nor does Javors teach distributing predetermined percentages of savings between the healthcare consultation group, the healthcare practice and the insurance network.

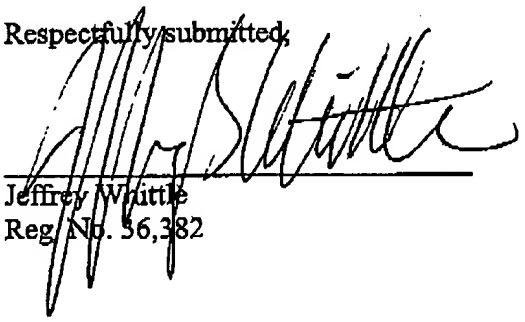
McCallum describes reporting patient-blind or patient-specific information to physicians and Independent Practice Associations to optimize the effective clinical care and manage costs better (Col. 8, lines 36-67 to Col. 9, line 22). McCallum does not teach a method of collecting fees for managing and optimizing the profitability of a plurality of physicians in a healthcare practice participating in an insurance network. McCallum does not even remotely suggest establishing a relationship between a healthcare consultation group and the healthcare practice participating in an insurance network to increase the physician's profitability by reducing a risk of not receiving a predetermined reimbursement amount for ancillary medical costs from the insurance network. Nor does McCallum teach distributing predetermined percentages of savings between the healthcare consultation group, the healthcare practice and the insurance network.

In view of the above remarks, Applicants believe that the combination of Javors in view of McCallum neither rises to the level of a proper prima facie 35 U.S.C. §103 rejection nor renders obvious Claims 1-20. One skilled artisan would not have produced the present invention based on the teachings or suggestions of Javors and McCallum, alone or combined. Therefore, Applicants respectfully request that the rejection of Claims 1-20 under 35 U.S.C. §103 be withdrawn.

CONCLUSION

In view of the amendments and remarks set forth herein, and the acknowledgements by the Examiners during the recent telephone interview, Applicants respectfully submit that the application is in condition for allowance. Accordingly, the issuance of a Notice of Allowance in due course is respectfully requested.

Respectfully submitted,



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